

MINUTES

MAY 28, 2013

PLANNING BOARD

LONG HILL TOWNSHIP

CALL TO ORDER AND STATEMENT OF COMPLIANCE

The Chairman, Mr. Connor, called the meeting to order at 8:05 P.M. He then read the following statement:
Adequate notice of this meeting has been provided by posting a copy of the public meeting dates on the municipal bulletin board, by sending a copy to the Courier News and Echoes Sentinel and by filing a copy with the Municipal Clerk, all in January, 2012.

PLEDGE OF ALLEGIANCE

ROLL CALL

On a call of the roll, the following were present:
Christopher Connor, Chairman
Brendan Rae, Mayor's Designee
Suzanne Dapkins, Member
J. Alan Pfeil, Member
Guy Roshto, Member

Excused:

Charles Arentowicz, Vice-Chairman
Ashish Moholkar, Member

Dawn Wolfe, Planning & Zoning Administrator

Gregory Aroneo, 1st Alternate
Timothy Wallisch, 2nd Alternate

Barry Hoffman, Bd. Attorney
Kevin O'Brien, Twp. Planner
Thomas Lemanowicz, Bd. Engineer

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EXECUTIVE SESSION - It was determined that there was no need to hold an executive session.

PUBLIC QUESTION OR COMMENT PERIOD

The meeting was opened to the public for questions or comments.

With regard to the Open Space Element, Mr. Dennis Sandow, Millington, said that he had volunteered to Mr. O'Brien several times over the past 5 years to make sure that the acreage numbers in that Element are up to date, coherent and consistent and he mailed him a copy of the most recent draft of the Open Space Element this afternoon and he managed to update all of the numbers. He said that the difficulty the Board is having is that the Open Space Element wanders all over the map in its definitions. When it talks about open space, he said that it talks about municipal open space, municipal land holding (including the schools), active recreational use, conservation easements, and density modification and it puts these together in various combinations and, although it might seem like the number for municipal recreational space is different at every point you see it in the document it, in fact, because the definition in that paragraph of what it is they are counting in that paragraph is different. He was concerned that, although he could put a number into each one of the paragraphs based on the March 2013 tax files, it is very easy to get confused in reading it because the numbers appear to be different unless you fully understand the subtle differences in the definitions and, in some cases, there is no reason for those subtle definitions. Some of the definitions came from the 1996 version and some came from the 2003 version and some of the numbers surprisingly match the 2009 numbers but only in certain paragraphs and it is possible that at some point 3 or 4 years ago he tuned up some of the numbers but some of the other numbers didn't get tuned up, changed, or whatever. He brought it to the Board's attention because he thought that before it commits this to a final element and hold a hearing on it, it would be a smart idea to make the numbers consistent and readable. He suggested that he and Mr. O'Brien sit down, possibly with a member of the Board, and at the Board's call kicking and screaming with or without the help of the Open Space Committee and try to bring these numbers down to a nice, smooth, consistent readable base.

Mr. Connor felt that it makes sense and said that he knew that the Open Space Committee worked on it and gave it to Mr. O'Brien who modified it based upon needs. He said that he worked directly with the Chairman of the Open Space Committee. He agreed that we should make sure that the numbers are right and, if they can be more clearly defined to do that, he would like to do that with a member of the Open Space Committee. He suggested that Mr. O'Neill be contacted to see if he or one of the members will join Mr. Sandow.

Mr. Sandow said that he would be happy to have Mr. Connor take care of that.

Mr. Connor replied that, if Mr. Sandow and Mr. O'Brien are willing to work out the numbers, he would like to get a member of the Board involved, as well as a member of the Open Space Committee.

Mr. Sandow said that a few of these are judgment calls. For example, all of the schools have playgrounds and ballfields. In one instance, he believed that those acres are counted and in other instances they are not. He said that

the policy question is, do we want to include the recreational facilities at the schools as a part of our base? Then we can do that consistently, otherwise *not* consistently. He said that he would be more than happy to sit with a group and walk through these policy choices and let them make the decision and then Mr. O’Brien can provide a document that is *possibly* shorter but at least internally consistent.

Mr. Lemanowicz said that, as part of this process, he contacted Mr. O’Neill to go over the existing mapping and mapping that would help him and he invited him to the meeting on June 3rd just to go over what they have, so this is obviously going to tie in because if they want to map these things, how it is split up and designated is part of that discussion.

Mr. Roshto believed that at the last Planning Board meeting we agreed from a policy perspective that we wanted all of the open space, including the schools, included in the document as we had noticed that ourselves and asked for it.

Mr. Connor said that when he looked at it, he figured out the different definitions, but he agreed that he had to read it twice before he understood the various definitions and he was not sure he understood them all at this time.

There being no further comments from the public, the meeting was closed to the public.

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Mr. Connor announced that a discussion/update of the Master Plan Subcommittee progress was scheduled next on the agenda but, unfortunately, Ms. Harrington (who is the Chair) is away for personal reasons and she contacted him and advised that she would appear at the next Planning Board meeting to provide an update. He said that he had attended some of the meetings and the data collection portion of it is moving forward.

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Mr. Roshto asked Mr. Connor if he would like an update on the Millington Element.

Mr. Connor replied affirmatively.

Mr. Roshto said that the Millington Subcommittee met twice so far and has made good progress on the fundamentals/basics and also did a traffic study. He believed that in the next 6 weeks or so they will be ready to present the Element. He added that, next week, the Historic Preservation Advisory Committee will be talking about the Historic Element and that Element will be ready for the Planning Board to discuss soon, as well.

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DISCUSSION
DRAFT REVISIONS TO ORD. 312-13 – REVISING FEES AND ESCROW DEPOSITS

Mr. Connor said that a meeting was held last week with Mrs. Wolfe, Dr. Rae and Mr. Moholkar to discuss the proposed changes and the members should have received a copy of the proposed changes. He said that they were twofold – basically a number of minor changes and clarifying the responsibilities where it said that the Twp. Clerk (who does not actually have any role in this). He said that there was agreement to have escrow funds increased when they are depleted to 25% of the original escrow amount. As long as the reporting from the professionals is reasonably quick, the 25% is manageable. He said that the last piece was changing words. When additional funds are needed, the original version just set a 50% number as the amount that should be asked of the applicant and it was decided that, in some cases, that might not be enough and so the words were changed to say it will be 50% of the initial escrow *or* a greater amount as determined by the input from the professionals. He said that there was general agreement from the group that that was a good recommendation. He asked Dr. Rae (who was at the meeting) for his reaction.

Dr. Rae said that he felt that Mr. Connor had represented the substance of the discussion quite well.

Mr. Connor asked if there were any questions. There being none, he proposed a motion to send the draft revisions to Ordinance 312-13 to the Township Committee.

Mrs. Dapkins made the motion that the Planning Board finds the proposed ordinance to be consistent with the Master Plan which was seconded by Mr. Wallisch.

Mr. Roshto said that he had an opportunity to talk with Mr. Pidgeon, Twp. Attorney, about that specific section of the Ordinance and it is his belief that it is *inconsistent* with the M.L.U.L. Therefore, he proposed that the Board either send it to the Township Committee and let them address that issue or send it to the Ordinance Subcommittee and let them address it.

Mr. Connor said that that was the first he had heard of that. He said that it had actually been reviewed by Mr. Pidgeon earlier and he didn’t have a problem with it.

Mr. Roshto said that he was talking about the recent changes in the additional escrow section. He said that he had not seen those changes and so he sent them to him to get his feedback and his reply back was that it was his belief that it was inconsistent with the M.L.U.L.

Mr. Connor asked Mr. Hoffman for his input.

Mr. Hoffman said that he would defer to whatever Mr. Pidgeon, who has worked on this for some time now, would advise.

Mr. O’Brien asked if Mr. Pidgeon had said why or gave a citation.

Mr. Roshto referred to Sec. 40:55D-53.2 entitled “Municipal payments to professionals for services rendered; determination”. He said that that section of the M.L.U.L. talks about the Chief Financial Officer of the municipality making payments to professionals where we are not specifying the Chief Financial Officer. He said that it talks about a subdivision and that the amount of the deposit should be based upon the number of proposed lots; and that all professionals shall submit vouchers to the Chief Financial Officer of the municipality on a monthly basis and the professional shall send an informational copy of all vouchers or statements submitted to the Chief Financial Officer simultaneously to the applicant, etc. He said that, if an escrow account contains insufficient funds to enable the municipality or approving authority to perform required application reviews or improvement inspections, the Chief Financial Officer (CFO) of the municipality shall provide the applicant with a notice of the insufficient escrow or deposit balance. The applicant shall, within a reasonable time period, post a deposit to the account in the amount to be agreed upon by the municipality or approving authority and the applicant. He said that he believed that the section that was drafted bypasses those things, in fact “approving authority” was removed and replaced with our Planning & Zoning Administrator.

Mr. Connor said that the original version had no reference to the CFO and it was either the approving authority or the Township Clerk. He said that the Township Clerk is not involved in the process and, basically, it was made to be consistent with the way the process currently works. He said that he would like to get Mr. Pidgeon’s opinion as to what specific pieces he would recommend be changed. He felt that sending it back to the Township Committee doesn’t make a lot of sense because it is a legal question that Mr. Pidgeon is well able to deal with.

Mr. Roshto said that he felt the Board’s options are either to pass it tonight and send it to the Township Committee and let them make the changes, or send it back to the Ordinance Review Subcommittee (ORS) and have it addressed there.

Mr. Connor said that the problem with the ORS is that they do not have legal counsel and don’t pay for Mr. Hoffman’s attendance. He said that his preference is to pass it and send it back up to the Township Committee and let Mr. Pidgeon indicate any inconsistencies and what his suggested replacements are and then we will have to check with Mrs. Wolfe and Mr. Henry to see if somehow our procedure is legal.

Mr. O’Brien said that the fact that a number of things that were mentioned that are in that particular paragraph, even though they are not in our Ordinance, we still have to obey them because they are part of the MLUL, so that part about the bills being distributed to applicants and the CFO, all happens automatically because the MLUL is a higher authority. He said that, if Mr. Pidgeon has found in some specificity that there is something wrong with the numbers that were cited before, then he thought that the Chairman’s idea to let the Township Committee and its counsel revise the proposed ordinance in accordance with Mr. Pidgeon’s interpretation is a good one.

Mr. Connor added that, if we have to change it to “appropriate authority”, then we will do so as long as we can decide what that is. He then requested a roll call vote.

Mr. O’Brien reminded that Mrs. Dapkins moved and Mr. Wallisch seconded.

A roll call vote was taken. Those in favor: Mr. Connor, Mrs. Dapkins, Mr. Pfeil, Dr. Rae, Mr. Roshto, Mr. Aroneo, and Mr. Wallisch. Those opposed: None.

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1107 VALLEY RD., LLC
1107 Valley Rd.
Block 10514, Lot 1

#12-06P
Minor Site Plan

Present: Vincent T. Bisogno, attorney for the applicant
Dr. Fred Rossi, Jr., principal of the applicant
Monica Kuechler, proprietor of the existing dance studio on the site

Lynn Forrest, certified shorthand reporter

Proof of service was submitted.

Mrs. Dapkins recused herself from this application.

Mr. Vincent Bisogno, attorney for the applicant, introduced Dr. Rossi, principal of the applicant, and Ms. Monica Kuechler, proprietor of the existing dance studio on the site, who were sworn. He then gave a brief introduction of the application. He said that the applicant is the owner of 1107 Valley Rd., Stirling, NJ and, in 2009, they received

preliminary and final site plan approval and variances to modify the existing building which contains approximately 9,934 S.F. He said that the applicant presently would like to reconfigure the first floor by transferring some 902 S.F. of floor space from the existing toy store to the existing dance studio. They are *not* extending beyond the existing footprint – everything proposed is to the interior of the building. The 2009 Resolution provided that, in the event there was any change in the occupancy of the building or, in the event that the parking requirement increased because of what they would be doing to the building, they would have to reappear before the Board. He said that, apparently there was some confusion about the floor area and Mr. O'Brien and Mr. Lemanowicz determined that they should come back before the Board. He explained that the proposal is more particularly depicted on an As-Built plan prepared by Kennon Surveying Services, Inc. dated April 13, 2012 and revised to August 1, 2012, same consisting of a single sheet and on floor plans prepared by Nicholas J. Ferrara, Architect/Planner, which plans are dated April 18, 2013 and which also consists of a single sheet.

He said that he had an outline of the existing square footage of the building and how much square footage is occupied by each of the tenants. He also had a plan of what the reconfigured square footage will be and the parking requirement. He said that he would like to submit them as an exhibit.

Mr. Hoffman said that from the report he had received today from Mr. O'Brien, it would appear that there is an increase being generated as to the number of required parking spaces and he felt that that increase would constitute an intensification beyond that which had been allowed in the prior approval for the site and, without further notice, the question then becomes whether this Board would have the jurisdiction to hear or entertain this matter tonight without that additional notice being served.

Mr. Bisogno said that he did not know anything about such a letter from Mr. O'Brien. However, he said that his calculations show that the applicant does not need any additional parking spaces then what was approved in 2009, in fact they need *less*.

Mr. Hoffman referred to Mr. O'Brien's planning report dated 5/22/13 which was e-mailed to him within the last couple of days. He said that he only learned of it today.

Mr. Bisogno repeated that his client needs even *less* parking than before and again requested to mark into evidence a document depicting the existing and reconfigured square footages of the building, as well as the parking requirements with the reconfigured square footage.

Mr. Hoffman felt that if the applicant can establish that there is indeed no additional increase in the required parking, then it would be entitled to proceed, however he said that he would have to rely upon the Board's other consultants to determine whether there would in fact be a requirement that is increasing the parking. He said that Mr. Bisogno can proceed subject to his being able to establish what he said this evening and it would then remove the jurisdictional impediment to proceed tonight.

Mr. Bisogno marked his outline of the existing square footage of the building and how much square footage is occupied by each of the tenants as **EXHIBIT A-1** and distributed copies to the Board. Referring to the exhibit, he said that as you can see it contains the existing square footage on the left hand side and the reconfigured square footage on the right hand side. He said that what is happening is that dance studio is being increased in size by 902 S.F. and toy store is being reduced in size by 902 S.F., so theoretically there should not be any change. He said that the existing café, which originally had 18 seats, now does not have *any* seats at all, however they are *anticipating* that they may have 10 seats. He said that if you look at the calculations of the existing and reconfigured square footages, the total is the same except that it was broken down differently. He said that the parking requirement on the first floor is the same for each tenant (one for every 200 S.F., except for the café, and it shows that a total of 50 spaces are needed. He said that when they were before the Board in 2009, the Board said that they needed 53 spaces so, therefore, they need *less* spaces today. He said that the Resolution said that they only had 43 spaces, but they really have 44 spaces if you count them. He said that his position is that they do not need a parking variance because the parking ordinance says that they only need 50 spaces which is less than what was the requirement in 2009.

Mr. Lemanowicz said that Mr. Bisogno indicated that the café does not have (or intend to have) seating. He asked if the owner of the business could explain the outdoor seating on the porch.

Mr. Bisogno replied that the owner of the café put the outdoor seating there himself, however if the Board would like it removed, it will be removed. He said that when he drove by this evening, there was one table there with 4 seats.

Mr. O'Brien said that the problem is that the numbers on the plan by Mr. Ferrara and the numbers in Mr. Bisogno's letter do not add up. He said that he did not have a problem with accepting Mr. Bisogno's word.

Mr. Bisogno replied that he took his numbers right from Mr. Ferrara's plan and asked what doesn't add up?

Mr. O'Brien referred to Mr. Ferrara's plan and said that it shows that the dance studio has an existing square footage of 2, 611 S.F. and, on the left, it says that the dance studio proposed expansion is 875 S.F., so one would assume that you take those two numbers and put them together, but it seems as though the 2,611 number represents the existing and proposed dance studio.

Mr. Lemanowicz said that the way it is shown on the plan looks like the dance studio is 3,486 S.F.

Mr. Bisogno disagreed and said that the dance studio is now 1,709 S.F. and *it will be* 2,611 S.F.

Mr. O'Brien replied that that is why he said that there is an inconsistency between the numbers on the plan and in Mr. Bisogno's letter.

Mr. Bisogno replied that he understood.

Mr. Hoffman said that the prudent course of action would be, to the extent that there is a question in anyone's mind as to whether there is or is not an intensification of the parking situation at the site, to instead of commencing the public hearing this evening, carry the matter and allow additional notice to be given removing any potential jurisdictional problem.

Mr. Bisogno replied that his client does not want to do that. He said that Ms. Kuechler is waiting and has people who want to start dance lessons. He questioned how far off they would be on this noting that the numbers are the numbers. He said that the requirement is the same (one parking space for each 200') whether it is for a dance studio, a toy store, or whatever. He said that they are only reconfiguring the inside.

Mr. Connor said that if the number on the plan is only a clerical error, he would hate to have to go through the process again.

In response to Mr. O'Brien, Mr. Bisogno said that Mr. Ferrara is not present this evening.

Addressing Mr. O'Brien, Mr. Roshto said that, if we are talking about moving a wall, then it would seem to be correct that if you are going to expand by 875 S.F., then something else is going to change on the other end of that.

Mr. O'Brien replied that that is why they didn't all add up. He said that Mr. Bisogno is correct in that the gross floor area is not changing and the parking requirement for that floor area is 1 per 200 S.F. He said that the plan was misleading unfortunately.

Mr. Connor said that it appears that the floor area is not being increased and, if that is the case, the parking would not have to be increased.

Mr. Roshto asked if there was precedent to move this case along.

Mr. Hoffman replied that the applicant could commence the hearing at their risk and, meanwhile, allow for additional notice before any action is taken on the application.

Mr. Connor said that he was in favor of going on with the hearing.

Mr. Hoffman said that the courts have consistently stated the fact that, as a legal principle, if there is any question as to jurisdiction, a matter should not proceed and that was all he was trying to point out.

Mr. Connor ruled that the Board would proceed.

Mr. Bisogno said that Dr. Rossi is present and he would like to have him confirm the floor areas so that it is documented.

Addressing Mr. Roshto, Mr. O'Brien said that, in addition to having Dr. Rossi confirming numbers, you could, should you choose to proceed, require the revised plans that are consistent with the information given to the Board this evening, be presented to staff to review to make sure that everything is consistent.

Mr. Bisogno said that he would have no problem with that and reminded that his clients and Ms. Kuechler had already been sworn.

Dr. Rossi confirmed that the square footage of the building is 9,934 S.F. He also confirmed that Mr. Bisogno's figures were correct on **EXHIBIT A-1** and said that they are only proposing to put up an interior wall so that the dance studio can expand and the toy store can contract. He also confirmed that the café currently does not have any tables in it, preferring to be a retail store and catering business and they need the room for their extra supplies.

In response to Mr. Bisogno, Dr. Rossi said that, during the period between 2009 and now, he has not noticed any parking problem on his property with regard to people having difficulty finding spaces. He noted that the only days that all of the tenants (including himself) are present are Mondays, Tuesdays and Fridays. He said that he has noticed that there is always a good flow and there is always a minimum of 4-5 parking spaces available.

Ms. Monica Kuechler, the proprietor of the dance school, stated that the applicant's proposal would enable her to have two studios in the portion of the building which she had rented (instead of only one studio, as at present). She said that this will allow the children to dance during consecutive hours, so there would be *less* frequent drop-offs and pickups, noting that they will be present 3 hrs. per night, for example, versus 1 hr., coming and going. She said that most of her students are "drop-offs" except for the 3 year olds. Those parents like to stick around. She said that her business has grown a lot in the past 7 years and she could use the extra space because she is currently turning

children away because she cannot fit them in the one dance room that she has. She added that she has never noticed any parking problems where guests/customers could not park in the lot.

In response to Mr. Lemanowicz, Ms. Kuechler said that she would be taking on an additional 875 S.F. (902 *gross* S.F.).

In response to Mr. Lemanowicz, Mr. Bisogno said that the 902 S.F. comes from the toy store and it will be added to the dance studio.

Mr. Lemanowicz said that the plan says 875 S.F., not 902 S.F.

Mr. Bisogno said that 902 S.F. is the correct figure and that is where all the confusion came in.

Mr. Lemanowicz replied that that is another inconsistency.

Mr. Bisogno said that he had no further witnesses.

Mr. O'Brien asked if Mr. Bisogno wished to answer any of the comments contained in the letters.

Mr. Bisogno replied that he did not see too many comments that had not already been addressed. He said that Mr. Lemanowicz had said that the lines in the parking lot were somewhat dim, however he was there himself and did not see it and thought the property was in fairly good condition. He asked Mr. Lemanowicz if he had anything else in his letter.

Mr. Lemanowicz replied that there was a sign obstructing a required aisle and he believed that that type of sign is actually not permitted.

Mr. Bisogno replied that that was not his clients' sign and that it belonged to one of the tenants who will be told to take it out.

Mr. Lemanowicz said that the striping was faded and is beginning to look a lot older than it really is and is particularly noticeable in the fire zone in front of the building.

Mr. Bisogno said that that will be taken care of in normal course.

In response to Mr. O'Brien, Mr. Connor said that the striping could be taken care of in the normal course.

Addressing Mr. Bisogno, Mr. O'Brien said that he had pointed out in his report that any change in occupancy and parking required that a new operating schedule be revised. He asked if that had been done.

Mr. Bisogno said that his clients can deliver that as part of their submission with their architectural plans.

Mr. O'Brien asked Mr. Bisogno if he had had a chance to look at the operating schedule from 2009.

Mr. Bisogno replied affirmatively.

Mr. O'Brien asked Mr. Bisogno if he had seen any changes to that schedule to Dr. Ippolito or Dr. Rossi's knowledge.

Mr. Bisogno replied that he did not think so, but he wanted to confirm that with Dr. Ippolito and submit a new schedule.

Mr. O'Brien replied that that really should have been part of this application or something that was given to the Board as part of their hearing because we do not know if there was a change in that schedule or not and the Board was very specific that that operating schedule be provided.

Mr. Bisogno said that it will be submitted and he was sure that, if there was a change, it was very minor.

Mr. O'Brien said that he also questioned where the bicycle rack was.

Mr. Bisogno replied that there is none.

Mr. O'Brien asked when it will be placed since it is a condition of the original site plan.

Mr. Bisogno replied that it could be done within 30 days.

Mr. O'Brien said that it should be noted that any outdoor dining at the site shall either comply with all applicable Township regulations or shall be removed.

Mr. Connor said that the café was approved by the Administrative Site Plan Waiver Subcommittee and, at the time, the owner of the business had indicated that he would have a couple of tables. He said that there was no discussion

of outdoor dining and, therefore, he suggested that the café owner remove them and, if he wants to put them back, he would have to go through the normal channels noting that he has the right to have the tables if he so chooses, however.

Mr. Bisogno agreed and said that he would have no problem with that.

Mr. Lemanowicz referred to Mr. O'Brien's Photo #2 and said that, as you can see, the striping in the fire zone is practically gone and this Board went through a lot of aggravation with that fire zone to make sure that the property was safe and the circulation worked. He said that it is beyond "a little worn".

Mr. Connor said that if Mr. Lemanowicz suggested that it be made a condition of approval, he was sure they would get it accomplished within a 30 day period of the adoption of the Resolution.

Mr. Bisogno said that his clients agree to that.

Mr. Roshto asked Mr. O'Brien for the reasoning for the bike rack.

Mr. O'Brien replied that it was so that people could ride their bikes to the site and park there.

Mr. Roshto asked if it was based on the type of use or if it was just a general requirement that we want every business to have a bike rack.

Mr. O'Brien replied, "both" in that it was felt by the Board in 2009 that this combination of uses was one that lent itself to people riding their bikes to go to it and also a general wish when it was appropriate to install bike racks along Valley Rd. given the initial Master Plan for Valley Rd.

In terms of bike racks, Mr. Roshto asked Dr. Ippolito if he had customers that use his facilities that come and put a bike next to the door.

Mr. Bisogno replied that his client told him that they did not put it in during the first 6 months and then they realized nobody was coming with bicycles and that is why they didn't do it. However, he acknowledged that the Resolution requires it.

Mr. Roshto asked if it was within the Planning Board's authority to not require a bike rack.

Mr. O'Brien replied that the site plan can be amended, however he deferred to Mr. Hoffman.

Mr. Hoffman said that what he found disturbing is that the applicant is making unilateral determinations that are at variance with what this Board had approved. If the applicant wanted to say that no bike rack is needed, he said that they clearly should have come back here, given notice, and allowed the Board to make the decision rather than for them to usurp the Board's functioning.

Mr. Roshto said that he was bringing it up because he was not sure, as a Planning Board member, that a bike rack necessarily makes sense for the type of use that he has seen for that area.

Mr. Hoffman said that the Planning Board clearly has the right to change what the Board had previously decided, but the applicant does not have that right.

Mr. Connor asked for clarification as to whether the bike rack was ever there.

Mr. Bisogno replied, "No".

Dr. Rae agreed with Mr. Roshto. He said that we must remember that the premises fronts on a busy County Rd. where you really don't see too many cyclists. He felt that, if the Board has the authority to remove that stipulation, it should.

Mr. Connor agreed. He asked the Board members for their feelings on whether or not a change should be included in the Resolution for a change in the bike rack.

Mr. Pfeil replied that he did not feel the requirement should be changed and that we should encourage pedestrian and other uses along Valley Rd. He said that if the original approving Board felt that a bike rack was appropriate for the site, he was fine with that.

Mr. Wallisch said that he would like to know what it was at the time that led that Board to believe that these business types were any more conducive or susceptible to bicyclists than any other business in the Township. He said that he was siding with Mr. Pfeil, slightly, although it did not seem to him that it was entirely necessary based on the history since the building has been open.

Mr. Connor said that the basis was that the Master Plan at the time encouraged bike traffic and reducing traffic congestion on Valley Rd.

Mr. O'Brien added that it was consistent with other decisions that the Board had been making in and around that time period. He said that other applications along Valley Rd. also required bicycle racks.

Mr. Roshto pointed out that, since that time, the Element has changed quite dramatically and we removed residential uses from that area. He said that it is not a destination where people come and stroll around and enjoy things. It is a place where people are driving their cars to get to a location.

Mr. Wallisch said that he was in favor of removing the requirement.

Mr. Connor said that he would rather see it stay but he did not want to get to a 3 to 3 vote on this, therefore he would agree to remove the bike rack.

Mr. O'Brien noted the following conditions:

- Restriping of the parking lot will be required.
- A new operating schedule will be provided.
- Note that any outdoor dining at the site shall either comply with all applicable Township regulations or shall be removed.

Mr. Bisogno added that his clients were going to modify their architectural plans to conform to **EXHIBIT A-1** and have a tenant remove his sidewalk sign.

Mr. Connor added that the original site plan is to be amended to remove the bike rack.

Mr. Bisogno said that Ms. Kuechler would like to begin her expansion as soon as possible and so if there is anything that could be done to expedite the approval process it would be very helpful to her.

Mr. Hoffman said that the application is being approved and the draftsmanship doesn't hold them up from going forward.

Mr. Bisogno thanked Mr. Hoffman and said that he would get the appropriate documents to Mr. Lemanowicz and Mr. O'Brien regarding the architectural and the schedule.

Mr. Pfeil commented that the application seems to have an awful lot of defects in it for what should be a relatively simple application. He said that the plans are wrong; the bike rack was never honored in the original Resolution; outdoor dining started without going through the approval process; and the operating schedule wasn't provided to this Board along with this application. He said that it seemed that nothing has been done right, yet we are going to approve the application. He felt that there is something wrong with the review process if this can get before the Board with so many inconsistencies.

Mr. Bisogno said that his client is the owner of a piece of real estate and he thought what he was doing was fairly simple and he did not need any variances or any other approvals – he was simply modifying the interior of a building. He said that he did not come to him to prepare the application and that he got involved very late in the game, in April, when he came to him and said that he said he had to come before the Board. He said that *maybe* a part of that problem was because of the fact that he did not even think he needed a lawyer or that he would have to come before this Board.

Mr. Roshto made a motion to approve the application for minor site plan approval subject to the conditions discussed which was seconded by Dr. Rae.

A roll call vote was taken. Those in favor: Mr. Pfeil, Dr. Rae, Mr. Roshto, Mr. Aroneo, Mr. Wallisch and Mr. Connor. Those opposed: None.

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CLASSIC FOODS, INC.
1013 Valley Rd.
Block 10601, Lot 7

#13-03P
Minor Site Plan

Present: Vincent T. Bisogno, attorney for the applicant
Michael V. Testa, licensed professional architect
William Hollows, licensed professional engineer
William Haiback, principal of Classic Foods, Inc.

Lynn Forrest, certified shorthand reporter

Proof of service was submitted.

Mr. Vincent T. Bisogno, attorney for the applicant, said that his client has applied for minor site plan approval and variances for signs. The property is located at 1013 Valley Rd. and is located in a B-2 Zone. He said that Mr. O'Brien has outlined in his report, on Pg. 2, the variances that are required. He said that minor site plan approval is

required because of the fact that they are making changes in the façade of the building which will be described by the applicant's architect. He said that the significant sign variances pointed out by Mr. O'Brien are that the Ordinance only allows one sign on the building and they are proposing 3 signs on the building. He said that Mr. Lemanowicz pointed out that in the back of the building, there is a drive-thru which has a menu and a sign overhead which advises of the clearance which he felt are signs, although he did not look at it that way. He said that the first variance is for the number of signs and the second variance is for the square footage that is allowed for the signage and the third variance is for the material that is used for the signs which will be discussed in detail. He said that this Burger King has existed at its location for 29 years and they have a program to upgrade their stores.

Mr. Michael V. Testa, licensed professional architect, Mr. William Hollows, licensed professional engineer, and Mr. William Haiback, owner of Classic Foods, Inc., were sworn.

Mr. Bisogno presented a colored rendering of a Site Plan by William G. Hollows, licensed professional engineer, dated 11/28/12, last rev. 2/20/23, consisting of Sheet 2 of 3, which was marked into evidence as **EXHIBIT A-1**. He also presented a colored rendering entitled "Building Elevations For: Burger King" prepared by Michael V. Testa, architect, undated, which was marked into evidence as **EXHIBIT A-2**; and a plan entitled "Proposed Alteration For: Burger King" - "Building Elevations" by Michael V. Testa, architect, consisting of Sheet PB-2, which was marked into evidence as **EXHIBIT A-3**.

Mr. Michael V. Testa, architect, reviewed his educational and professional background and was accepted as an expert. Referring to **EXHIBIT A-1**, he said that the property is fairly rectangular and contains a free-standing restaurant which is slightly closer to the eastern edge of the site, with the side of the building facing Valley Rd. As you enter into the site, he said that the main parking area is on the westerly edge and that is where you will find the main entrance with no visibility to Valley Rd. He said that there is a drive thru that comes around the rear of the property with a stacking area. He referred to 4 colored photographs of the building showing all 4 elevations which he had taken last fall and were marked into evidence as **EXHIBIT A-4**. He said that the first photo is of the building facing Valley Rd.; the second photo is of the main entrance to the building along the westerly edge of the property; and the third and fourth photos are of the rear and left side of the building where the drive-thru is located.

In response to Mr. Bisogno, Mr. Testa agreed that there are no signs on the building presently.

Referring to **EXHIBIT A-2**, Mr. Testa described the four elevation views. He said that the color scheme will be changed consisting of more earth tone colors (beiges, dark browns, and a charcoal color). He said that the structure and building footprint are not changing. A couple of vertical elements were added to break up the long horizontal continuity of the façade to make it a little more interesting. By doing that, he said that they created pilasters built off the face and went up above the main parapet roof. He said that the highest vertical element over the main entrance on the west is indicated on the elevations as being 21' 6". He said that they vary the building materials going from the existing painted brick which was a blue scheme and went with a dark brown base of the building with painted brick. He said that they kept the existing greenhouse structure that is an existing dark brown frame and have removed the old painted blue asphalt shingles and added a new standing seam metal roof on the mansard. He said that the tower elements and vertical pieces consist of HardiPlank which is a very durable, quality material. He said that they also have a panel system along the back which is very much like the HardiPlank and consists of 2' x 3' composite panels that wraps the side areas and around the rear. It is more durable than the painted textured T-111 siding which will be removed where needed, otherwise they will just go over the top of it. He said that there is an existing red band at the top of the building which was intended to be illuminated, although it has not been illuminated for all the years that the Burger King has existed on the site. He said that the new Burger King still maintains that red accent band which they would like to have illuminated however, if illumination becomes an issue, they are willing to discuss alternatives. He said that they discussed the foot candles with the signage vendor and it will be throwing off 9 foot candles at a distance of 12", so it is not intended to light anything, it is intended to accent the building.

In response to Mr. Bisogno, Mr. Testa said that the purpose of the red stripe is solely an eye catching accent to cap the top of the building and finish it off.

Mr. Bisogno said that Mr. O'Brien had indicated that that may be considered somewhat like a string of lights or tubing.

Mr. Testa replied that he has worked on a number of Burger Kings in the area (at least 4) and all it is is a plastic or Lucite material that contains an interior lighting element (either an LED or some type of low voltage fixture).

Mr. Bisogno referred to signs that say "Burger King" that are on the building and are round in nature.

Mr. Testa said that those are called "button signs" which is a term that Burger King uses. He said that they are round emblem signs that are mounted on the wall and are internally illuminated with a plastic lens over them. They are used to illuminate the brand name rather than as site lighting.

Mr. Bisogno said that the request is for 3 signs on the building. He asked Mr. Testa why 3 signs are proposed.

Mr. Testa replied that it was important that they have some kind of signage facing the street. He noted that most of the businesses in the area have a similar condition. He said that they wanted to capture that from the street so that people coming by the building can identify the sign and building and turn into the site. He said that that is the

purpose of the one sign which they feel is the most important sign on the building. He said that, as you enter the site, you will come along the long façade which, at times, will have cars parked in front of it. Right now, without any signage or the handicapped spaces there, we know that the entrance is somewhere there. He said that they felt it is typical that they have signage over the entry just as a front door on a home depicts entry. He said that the button signs are the same size as the sign that will be facing Valley Rd. He said that the third sign says “Home of the Whopper” and is not an internally illuminated sign. They are individual letters sitting on top of a horizontal canopy which they don’t have now, so when it rains and you open the doors, the water comes in, therefore the canopy will serve two purposes. It will provide some shelter and protect the interior of the building and there is a light fixture along the perimeter of the sign that washes up onto the letters.

In response to Mr. Bisogno, Mr. Testa said that the button signs are a plastic lens with internal light fixtures shining through them to accent the colors of the sign. The “Home of the Whopper” sign is made of a metallic material – individual box letters sitting on top of pins off of the canopy with a continuous light fixture that will wash up.

Mr. Bisogno noted that the Ordinance requires that the signs be of a carved wood or some other material other than what is proposed. He asked Mr. Testa if there is any way they can have these signs of a nature that would comply with the Ordinance.

Mr. Testa replied that he believed they could. He said that currently the sign out by the entrance is a wood grain looking sign, although he did not know what type of material it is made of. He said that it is something that they could do with an external light fixture such as a goose neck that could wash the sign. He said that they could be comprised of a material in conformance to what the Ordinance speaks to which would eliminate the variance needed for the material for the signs.

Mr. Bisogno said that the application indicates that 47.28 S.F. is allowed in signage and the proposal is at 81.25 S.F. with the 3 signs.

Mr. Testa did not believe that that is correct. He felt that other signs are being factored into that number. He said that each of the 3 button signs are 16” in diameter (or 19.6 S.F. each), so the 2 button signs + 39 S.F. He said that the “Home of the Whopper” sign is 14” high x 23’ 6” long which is 27 S.F. Therefore, he was looking at a total of 66 S.F. for the 3 signs.

In response to Mr. Bisogno, Mr. Testa said that he felt that the overhead element which Mr. Lemanowicz referenced is a clearance bar which is typical to any building. He said that, hypothetically, a painter could come around the bend and strike the bar as a precautionary element instead of hitting the roof. He said that the drive-thru on the eastern edge of the property has a canopy that overhangs the window, therefore the overhead element preempts that condition. He said that there is also a menu sign at the same location but down low. He said that he was not aware that either the overhead element sign or the menu sign is visible from Valley Rd.

Also in response to Mr. Bisogno, Mr. Testa said that there are existing wall packs (wall mounted light fixtures that are used to shine out and partially illuminate the site). He said that Mr. Lemanowicz brought up that the original drawings did not show the 6 fixtures that were on there and he also made reference to the fact that the light is just spraying across the site. He said that he updated a drawing and elevation (on **EXHIBIT A-3**) which shows those existing wall mounted light fixtures. He said that he also had a cut sheet of a new fixture which he could provide which indicates a replacement of the old florescent light fixture with a new shielded (or hooded) fixture in which the top piece can be adjusted so that they can control the throw of the light. If there are areas of the parking light that need more light, for example, they can adjust the hood up and it will allow the light to shine out. If there are areas in which they feel are too bright, they can close the hood down and it would direct the light towards the ground. A copy of the cut sheet depicting the new light fixture was marked into evidence as **EXHIBIT A-5**.

In response to Mr. O’Brien, Mr. Testa reviewed the (total) 66 S.F. of the 3 proposed signs. He presented a copy of colored detail of the signage information which was marked into evidence as **EXHIBIT A-6**.

Mr. O’Brien said that that differs from Mr. Hollows’ number on his Sheet 3 of 3 (in which he calculated the total square footage of the proposed signage to be 70.49 S.F.). He noted that the Ordinance measures signage from outside to outside.

Mr. Testa said that his **EXHIBIT A-6** is a sign detail. It indicates the height of the letters in the “Home Of The Whopper” sign, as well as its overall length. It also contains a side view section through the canopy that indicates the continuous light fixture that sits on the top of the canopy and washes up on the individual letters. In the lower right hand corner, it shows the button signs, their plastic covers, and dimensions that identify the 3 different colors on the sign, and also indicates the lighting pattern that is inside and concealed in the fixture.

Mr. Hoffman said that the application actually lists the total square footage of the signage to be 81.25 S.F. so, if anything it is over noticed.

Mr. Bisogno said that the Sec. 152 of the Ordinance speaks in terms of architectural building design. He asked Mr. Testa if he had looked at that section and, if so, could he advise if the proposal complies with that section and how the proposed design meets the Ordinance requirements.

Mr. Testa replied that he believed that it *does* meet the Ordinance requirements. He said that he highlighted a couple of areas that pertain to that that they tried to achieve and one is Sec. 152.1(e) which states that the appearance of the side and rear elevations shall receive the same architectural treatments comparable to any of the proposed front façade. He said that that is the consistency with the vertical element on the Valley Rd. side with the breaking up of the main entrance with the long horizontal façade which actually leads to Sec. 152.2 “Building Mass and Scale” where long horizontal facades should be broken down into segments having vertical orientation and tall vertical facades. He said that that is in achieving the breaking up of the different building materials and the different shapes. He also referred to Sec. 152.3(i) “Façade Treatment” that says that the use of creative lighting schemes to highlight building facades and related areas of a site shall be encouraged. He said that that lends itself to them keeping that red stripe as an accent figure which is the only one that is contradictory to the other elements. He said that it does not go around to the back of the building, it is only partial on a couple of the elevations. He then referred to Sec. 152.4(f) “Building Materials, Color and Texture” which calls for the use of earth tone color schemes of browns, beiges, grays, etc. and that is where they tried to capture those colors.

Mr. Bisogno said that the lighting on the property goes off at 11:30 PM.

In response to Mr. Aroneo, Mr. Testa said that the closest other Burger Kings he has worked on are located in Kearny, NJ, 3 others in Delaware, and 1 in Manhattan. He said that years ago (when the Gillette Burger King was built) Burger King had specific building sizes. He said that this is one of those typical building sizes and yet it is atypical. It has the atrium on the front left corner, a little haphazardly sloped element at the entrance, and it is not really facing the street like most others. Therefore, he said that he was able to take the elements that are part of their new concept and try to blend them into the façade of the building in its best way. As to the size of the vertical elements on Valley Rd., they did not want them too large but wanted them to accent the building. He said that they wanted them to be functional and yet appropriate to the building.

Mr. Aroneo asked to what extent the lighting and signage is required by the franchise or is Mr. Testa’s own design.

Mr. Testa replied that that is corporate and is an identification of the business. He said that it is a Burger King and they give them specific signage packages they can buy from. He said that they had a large element on the western side where they felt that the “Home Of The Whopper” sign really fit and enhances the façade on that side.

Mr. O’Brien said that he was not quite clear as to the answer to Mr. Aroneo’s question. He thought his question was, is this signage package being mandated by Burger King to the franchisee, or is this just an option that is available to any franchise?

Mr. Testa replied, “Not to my knowledge” and added that he would let Mr. Haiback speak to what is being mandated to him.

Dr. Rae asked Mr. Testa if the signs are the exact same in the other Burger Kings that he has designed.

Mr. Testa replied that the one in Kearny is very similar in size and they did the same thing with the tower elements, however it is on a much busier street and they have a giant pylon sign, so the environment is different. He said that signage on the subject Burger King is much more low key and is “kind of” located on a pad site in a shopping center. He said that there is adjacent competition right next store where they are competing against a building that has a sign doing the same thing and they are closer to the street than we are. He said that they have a corporate sign facing Valley Rd. and they have a sign depicting their entrance, as well.

In response to Mr. Connor, Mr. Testa said that the existing freestanding sign will remain without change.

Mr. Roshto asked which of the signs are visible from the street.

Mr. Testa said that, as you drive across the western edge of the property, there is a buffer of trees which pretty much shields the building since it is set back off of the road. He said that within 60’ of the entrance is really where the façade comes into view. He noted that the entrance side is not at the front corner, it is in the middle of the building.

Mr. Roshto asked for a square footage amount for the two signs that are visible.

Mr. Testa replied that the two button signs each contain 19.6 S.F. and “The Home Of The Whopper” sign contains 27.5 S.F.

Mr. Roshto asked Mr. Testa if he was saying that the 66 S.F. he quoted is visible from the street.

Mr. Testa replied that although it is visible from the street, he felt it would be difficult to read from the street and you would have to enter the site and look at the façade to read the sign.

Mrs. Dapkins asked what the purpose of “The Home Of The Whopper” sign is if you have to physically be on the site to see it.

Mr. Testa replied that it is the main entrance to the building and they felt it was important to have there because of the canopy element over the front door.

Mrs. Dapkins said that she had an occasion to visit the Burger King on Rt. 22 and they do not have the signage that is being requested for Long Hill. She asked Mr. Testa to explain why he felt that the additional signage is needed.

Mr. Testa replied that he was not familiar with the Burger King on Rt. 22. He said that he felt that the proposed signage works with the façade and is proportioned to what they have there. He said that it is not on the street and is intended more for the occupants on the site to acknowledge the entrance and that is the purpose of why it is proposed there.

Mr. Bisogno referred to the Dunkin' Donuts next store (which he believed is in the same zone) and said that it has two signs facing Valley Rd. (one saying "Dunkin Donuts" and one saying "Open 24 Hours") and their building is configured in the same way that Burger King is – the narrow portion is facing Valley Rd. He said that, in the parking lot (which is similar to Burger King's), there is another sign saying "Dunkin Donuts". He said that Burger King's is very similar to Dunkin' Donuts, although that is not a justification for it.

Mrs. Dapkins disagreed and said that it is not similar because Burger King was originally the subject of a use variance before the Board of Adjustment and part of the concession given by Mr. Ron Denone (former owner) at that time was the signage.

Mr. Bisogno replied, "Time's change". He said that he understood what Mrs. Dapkins was saying but all he was saying was that the 3 signs are not unusual for the area, so to speak.

Mr. Roshto asked Mr. Bisogno if "The Home Of The Whopper" language was something that he would *not* consider using.

After taking a moment to speak with his client, Mr. Bisogno replied, "Yes" and said that they can eliminate that sign if the Board desires, although they would like to have it. He said that if they can have the two button signs, that may be acceptable to his client and they would agree to do other things also in order to make the site more attractive according to corporate standards and according to the Township's standards.

In response to Mr. Connor, Mr. O'Brien said that the applicant has a copy of his report and he would rather listen to their testimony.

Mr. Lemanowicz said that he had already gotten into the lighting with Mr. Testa and he will try to get the lighting patterns in order to see if they comply with the Ordinance. He also said that there was a brief discussion about changing the button signs to match the freestanding goosenecks instead of being internally lit.

Mr. Bisogno replied that his client would agree to that.

Mr. Roshto asked Mr. O'Brien if he could explain the difference in the square footage in his report versus tonight's testimony.

Mr. O'Brien replied that he got his numbers from the plans, application, and the applicant's engineer and they all have different numbers, so he went with the numbers on the application. He said that he was not comfortable at this time with testimony on the square footage, but he was sure that they will get to that.

Mr. Bisogno said that it is somewhat of a moving target with regard to the size of the signs because Burger King has various different button signs that can be used. He also said that he had no further questions of the witness and called Mr. William Haiback to testify.

Mr. William Haiback, principal of Classic Foods, Inc., was previously sworn. He said that he has been a franchise holder of Burger King for 20 years and he has been operating the Gillette Burger King for almost 20 years. He said that he did not own the real estate and that it used to be owned by his partner who passed away and it is in an estate right now.

Mr. Hoffman said that the Application states that the DeNone Partnership is the record owner and they, in fact, obtained the original approvals for the Burger King.

Mr. Bisogno said that he believed that is correct.

Mr. Hoffman said that it did not mention anything about an estate.

Mr. Haiback believed that his partners are still there.

In response to Mr. Bisogno, Mr. Haiback said that Burger King has a new "Twenty-Twenty Image" which has been consumer tested throughout the country and has been very well received. He felt that it is a lot more pleasing than the blue roof that he has had for a long time. He also felt that the property needed an upgrade and the franchisor allows the franchisee to upgrade periodically and this was an opportunity for him to get the imagery and soften the décor. He said that he recently renovated the inside and he felt that it came out pretty well.

Mr. Bisogno asked Mr. Haiback if the façade changes are dictated by Burger King and what discretion, if any, he had.

Mr. Haiback replied that a lot of it is through their plans, however he can go back to them with a request from the Board on certain items. He said that he had a little leverage, but not a lot.

Mr. Bisogno said that Mr. O'Brien has suggested in his report that the applicant add some landscaping in the front of the property.

Mr. Haiback said that he would work with a landscape designed and come up with an acceptable plan, although he had not done so yet. He said that he was willing to work with the Township regarding the landscaping.

In response to Mr. Bisogno, Mr. Haiback said that there had been a container on the site during the time he was doing the interior work, however it has since been removed.

Mr. Bisogno said that there was also an issue regarding the sign material that the architect covered somewhat where they would change the material from the standard Burger King to meet the Ordinance requirement. He asked Mr. Haiback if he was willing to do that.

Mr. Haiback replied, "Sure".

Mr. Bisogno said that Mr. Lemanowicz mentioned in his report that the parking lot may need to be upgraded. He asked Mr. Haiback if he would be willing to mill the parking area, repave it, and restripe it in order to make it more attractive.

Mr. Haiback said that he was planning on doing the main part of the parking lot and restriping it.

Mr. Bisogno said that there is some suggestion of having two signs – one on the front of the building (which he pointed to on **EXHIBIT A-2**), and one on the side of the building. He asked Mr. Haiback if he would be willing to accept that if the Board granted him approval because only one sign on the building is permitted.

Mr. Haiback replied that he felt that they could live with that. He said that, years ago, they had an internally lit sign and the Township asked him to change it to a carved sign, which was done.

Mr. Bisogno asked Mr. Haiback why he needed a sign on the side of the building as opposed to just one sign facing the front (on Valley Rd.).

Mr. Haiback replied that, for the moms and kids, that is really the main entrance to the restaurant and it has always been that way. He said that no one every goes in the (actual) front entrance because it is not really accessible. He said that it is more of a directional thing to help families get there.

Mr. Bisogno asked if the existing signs for the height and the menu were there from the very beginning.

Mr. Haiback replied that they were there before his tenure and the clearance sign gets banged around and serves its purpose. He said that it is definitely needed there. He said that he had no plans for the menu sign except that, aesthetically, he may just add some brick around its base.

Mr. Bisogno had no further questions of Mr. Haiback.

Mrs. Dapkins said that there are currently two menu signs in the rear – a smaller one and a larger billboard type sign.

Mr. Haiback replied that there is one main menu board and asked if it could be the speaker that she was referring to. He said that there is only one stanchion menu board.

Mrs. Dapkins said that last week there was something there advertising specials.

Mr. Haiback replied that it could have been a logo on the end of it – he was not sure without seeing it.

Mrs. Dapkins also noted that there was a stop sign missing where you exit into the mall area.

Mr. Haiback said that he would see that it is replaced.

Mr. Wallisch asked if the red stripe on top is one of the required portions of the redesign.

Mr. Haiback replied that, over the years, Burger Kings have always had that red band that goes around the top of the building. He said that it is a signature item for the brand.

Mr. Lemanowicz said that the applicant indicated that he would be milling and restriping the parking lot and milling is taking off the asphalt. He said that he was assuming that it will be resurfaced.

Mr. Haiback agreed.

Mr. Lemanowicz said that a number of the inlets look as though they are in pretty bad shape.

Mr. Haiback said that he will have them fixed, as well.

Mr. Lemanowicz said that the Resolution for Application 02-06P said that the freestanding sign was supposed to be 3' off the ground, where the plan shows it to be 2' ± off the ground. He said that they should match, although he did not have an issue either way with it.

Mr. Haiback said that he would just as soon leave it the way it is.

There were no further questions of Mr. Haiback. Mr. Bisogno said that his final witness was Mr. William Hollows, licensed professional engineer, who was present to answer site questions. He added that there are very few site issues involved in this application because it is basically the façade and the signage.

Mr. Connor said that he did not hear the amount of proposed increase in height of the building.

Mr. Testa said that the heights that are proposed to be increased are the vertical tower elements. He said that the tower element is the highest which is over the main entrance and is 21'6". He said that the drawings were drawn to scale at the top of the red band and off of his grade it is at approximately 16' to the top of the existing mansard now. He said that it is an approximate 2'6" increase in height. The existing vertical tower at the entrance is 19'.

Mrs. Dapkins asked if any thought has been given to planting some new pine trees along Valley Rd.

Mr. Bisogno replied that his client prefers not to plant pine trees because he feels they may block the building.

Mrs. Dapkins said that that was an old story from 1984 and she did not think that he has had a problem with business because of the pine trees.

Mr. Bisogno said that his client is willing to work with the Shade Tree Commission in conjunction with Mr. O'Brien and Mr. Lemanowicz to work out a landscaping plan that is acceptable. He said that, if it is not acceptable, they will return to the Planning Board.

Mr. Lemanowicz said that the application currently has 53% lot coverage where the Ordinance allows 40%. He said that, in the past, Board's have encouraged applicants (when they exceed the maximum permitted lot coverage) to try to provide additional stormwater management and bring that number down so that it more closely resembles the Ordinance. He said that they are not really doing any new site work here and he did not know if the Board wants to go that way, but in the past that has happened.

Mr. William Hollows, licensed professional engineer, said that this site hasn't changed and it is the same with regard to impervious coverage. He said that it has a detention system built into it to the south of the building and south of the drive-thru. He said that he could not imagine that that detention basin wasn't built for the 53% coverage. He said that he did not know why we would even go there at this point. He said that there is quite a bit of storm drainage facility on the site that actually drains right into the basin.

Mr. Connor asked if there were any opportunities to increase it. He said that one of the things the Planning Board would like to see, if at all possible, is a decrease in runoff.

Mr. Hollows replied that drywells will not work there, so that is out of the question. He said that he did not know if anyone would want to reshape the basin. He described it as a nice lawn with a low flow channel through the middle of it. He said that he would rather see the water get in the basin and get out to the river and flow downstream before the water from upstream comes down to Stirling. He said that the problem with Stirling is not the day of the rain, it is the day *after* the rain.

As to the issue of new plantings in front of the property, Mr. Lemanowicz said that some kind of stormwater feature could be incorporated into a new planting bed to create a rain garden type of feature.

Mr. Hollows noted that Dunkin Donuts has a big detention basin in front and he felt that some of the overland flow from the subject property goes into that basin now.

Dr. Rae asked if there is presently a problem with flooding in that area.

Mr. Lemanowicz replied that throughout the Township whenever we have a situation, we try to make it a little bit better. In this case, because there are facilities out there already, he felt that a landscaped type feature that also addresses stormwater would not be inappropriate here because you have all of these other structural facilities all around you.

Dr. Rae said that the question is, do we have a problem right there in that area at the moment. If we did put in something like Mr. Lemanowicz suggested, he asked if it would help flooding elsewhere in the Township.

Mr. Lemanowicz replied that every little bit you can help is a benefit. He said that he has not done any calculations for what comes off the site at this point. He said that, if the Board wants to do something to reduce the stormwater runoff in a landscape feature, it wouldn't really take that much more to use it as a stormwater facility.

Mr. Connor said that there are words, although he did not know the exact location, clearly stating that there shall be no increase in runoff and we should encourage applicants, if possible, to reduce runoff. He felt that it is something the Board should do under any circumstances if there is an opportunity.

Dr. Rae asked if there will be an increase in runoff here.

Mr. Connor replied, “No, there clearly won’t”, but the point is that that is the minimum standard and we would like to see them do better if they can do it.

Mr. Lemanowicz said that the issue is that over time going back years and years they have only introduced stormwater management when there is a big project and that is great for the big project, but you have all these little ones that kept getting under the threshold and 100 little sites is a big site.

Mr. Wallisch asked if the water retention area in the back of the property flooded in the past.

Someone answered, “Never”.

Mr. Roshto said by making some small change here, we could increase by a small amount the retention of water on the site and, therefore, slow down the amount of possible flooding to nearby neighbors who may have a flooding problem.

Mr. Aroneo said that Mr. Lemanowicz is talking about an aggregate throughout the Township.

Mr. Lemanowicz agreed that it would be difficult to measure any improvement that we have here. He said that the logic in the past was that we didn’t have to worry about little sites and then we started to realize that the little ones count too and that is why we have an ordinance that requires drywells for a new residential dwelling.

Mr. Roshto said that the problem for him was that he was not sure exactly, in terms of cost, what we are talking about here. If it was a \$500.00 improvement that will help the Township, he would be for it, but if we are going to ask our property owners to spend \$15,000.00, he was not.

Mr. Lemanowicz said that what he was thinking of was something on the order of a rain garden where the drainage from the front law area would be directed towards the new plantings which would be wet tolerant so that they take the water. He said that it could go into the Dunkin Donuts basin to the east, although he had not looked at it that closely.

Mr. Hollows described where the existing runoff goes.

Mr. Roshto asked if the owner would be acceptable to a small rain garden as part of the changes.

Mr. Hollows said that he did not see it because 29 years ago the site was built and nothing is proposed to be changed with regard to the impervious coverage. He said that they have a detention basin that was designed at that point.

Mr. Haiback replied that he was not looking to install a rain garden. He acknowledged that he did not know what a rain garden really is, however he envisioned that it would attract bugs. He said that it is a clean property and he has kept it well maintained for the 20 years he has owned it. He added that he has never ever experienced a water problem on the site. He said that he is willing to do plantings and help in any way he could with regard to what the Board is looking for, however he did not feel that a rain garden makes a lot of sense.

Mr. Connor felt that the encouragement is “if possible” – it is not to increase the expenses, but given that there will be an increase in landscaping, if it could be done in a way that might possibly reduce the runoff, that is fine.

Mr. Roshto said that if Mr. Haiback doesn’t know what a rain garden is, it is not a fair question and he appreciated that.

Mr. Haiback added that he does not own the property.

Mr. Connor pointed out that the site contains 53% coverage, whereas the maximum permitted lot coverage is 40%. He said that the Board is not asking Mr. Haiback to spend thousands of dollars but just to consider some landscaping that might slightly reduce the runoff.

Mr. Bisogno said that his client will agree to that and will work with Mr. Lemanowicz in trying to implement some plan on site.

Mr. Pfeil said that on Pg. 5 of Mr. O’Brien’s report, he highlighted parapet lighting and the Board had asked the question of the applicant if the red band is integral to the Burger King brand, however we have not addressed the fact that it is adding 155 S.F. of lighting on the building. He said that it was a concern to him and the Board has not heard anything from the applicant about why that lighting is necessary or how bright it will be.

Mr. Bisogno said that he believed that the applicant's architect testified that the lighting would be very minimal. He said that he would ask him to confirm what the foot candles are.

Mr. Pfeil responded that it will still be a lighted red stripe around the 3 sides of the building which will be visible from Valley Rd., where it is not now.

Mr. Connor asked if the lighting of the red stripe is part of a requirement.

Mr. Haiback replied that he has the opportunity to go back to Burger King with certain concessions and he can go back and say that they have the signage and they cannot light the red band.

Mr. O'Brien clarified that the architect testified that the signage package being considered was not a requirement on Mr. Haiback, as a franchisee. He asked Mr. Haiback if he was being required to put this signage in.

Mr. Haiback replied that part of the Twenty-Twenty Image is part of a complete package and they would like to see everything put in. He said that he must make an effort to get the building as close to what they have done all the research on and received all the feedback that appeals to the customer base and improves what existed previously. He said that he probably could not do the project if the Board took out everything. He explained that he could go back to Burger King and tell them that they can put in 80% or 90% of what they are looking for and he felt they would say fine, go ahead and continue the project. However, he felt that if he said that every element is being taken out, they might say that at this point the project is not under the imagery they are under to improve the site and they will not approve it to be completed and then he would have to go back to square one and decide what he wanted to do with the building.

Mr. Roshto believed that the two elements being discussed are the lighting of the parapet and "The Home of the Whopper" verbiage. He said that, as he understood it, those two items could be removed.

Mr. Haiback replied that he was comfortable that if those two items were removed he could still do the project.

Mrs. Dapkins asked Mr. Haiback if he would be comfortable in removing one of the two button signs. She said that she did not see the point of the sign in the parking lot because when you park there you know it is an entrance and you know you are in Burger King if the big sign on Valley Rd. is allowed and there is also an existing sign on Valley Rd. already.

Mr. Wallisch felt that it helps break up the "black box" up there.

Mr. Haiback agreed that there would be a big black box with nothing on it.

Dr. Rae and Mr. Roshto agreed. Mr. Roshto said that it also is the entrance where people come in and he felt it makes sense.

On a poll of the Board, the majority of the members were in favor of removing "The Home of the Whopper" sign from the plan.

As to the lighting of the red parapet stripe, Mr. O'Brien said he heard that the button signs were going to be 16 foot candles and the channel signs were going to be 13 foot candles and, in comparison, the lighting that we allow in a driveway is .6 foot candles.

Mr. Bisogno said that the parapet sign is 9 foot candles and it would go off at 11:30 P.M.

Mr. Connor polled the Board. After further discussion, the majority of the Board members were in favor of removing the lighting from the red parapet.

Mr. Connor said that the Board needed to determine if the menu board is a sign.

Mr. O'Brien said that, in his opinion, the menu board *is* sign, although it is accessory and customary to this type of use and it was allowed when the Burger King was built 29 years ago. But, nonetheless, because it is a sign, the square footage of the sign is thrown in with all of the other numbers in order to come up with the variance relief should the Board wish to grant it.

Mr. Lemanowicz felt that the menu board is bigger than any of the other signs on the site.

Mr. Connor assumed that the applicant wants to maintain the menu board and not revise it in any way.

Mr. Bisogno agreed.

Mrs. Dapkins felt that the menu board is fine. She noted that it is in the back of the building and said that it is a necessity. She said that she would rather do away with one of the button signs but is willing to go along with it since the applicant has made a lot of concessions and he is a good neighbor to Long Hill Township.

Mr. Aroneo felt it has a function wholly separate and apart from the signs that are intended to attract business. He also agreed that it was a necessity.

Mr. Pfeil, Mr. Wallisch, Mr. Roshto, Dr. Rae and Mr. Connor also indicated that they had no problem with it.

Mr. Connor asked if there was any disagreement amongst the Board members with the proposal for having two button signs. (There was none).

Mr. Connor opened the meeting to the public for comments. There being none, the meeting was closed to the public.

Mr. Hoffman asked the applicant to revise the plans consistent with all of the discussions held this evening.

Mr. O'Brien said that the applicant should conclude with its statement concerning whether or not this application meets the N.J. municipal land use standards for the bulk variances in terms of either hardship or flexible c and negative criteria. Following that, he suggested that the various items that the Board has considered be listed for review.

Mr. Hoffman agreed.

Mr. Bisogno said that sometimes with a sign variance it is difficult to justify it and usually you justify a sign variance on the basis of some safety feature. He said that here we have situation where the building is somewhat unique in that the front of the building is not really the entrance to the building and you have a parking lot that is on the side so to speak instead of in the back or front. He said that it creates somewhat of some practical difficulties which is one of the justifications for granting a variance. He said that practical difficulties could be the shape of the property or even the shape of a building and it could also be safety features. He said that Mr. Haiback told him that some mothers drive up and are unsure of where the front door is. On that basis and also the fact that it is not going to be a *substantial* detriment to the zone plan or the Zoning Ordinance of Long Hill Township, now a substantial detriment to the public good because of the fact that right next door there is a Dunkin Donuts that has 3 signs and is a similar type shaped building and it is not harming anyone. He said that he had previously never noticed that they had two signs on the front of the building because it sits back from the road and he felt that is similar to the Burger King. He felt that the application is justified in regard to the positive and negative criteria. He also felt that his client is doing a lot of improvements to the property aesthetically. He said that he is going to fix the parking lot and restripe it and also fix the façade of the building so that it looks a lot better. He said that trees will also be planted in the front and he is also willing to work with Mr. Lemanowicz in regards to reducing some storm water runoff, if possible, and there will also be landscaping in the front of the property. He said that all of those factors come into play when you grant variances. He felt that under all of the circumstances, the applicant has met the criteria for the grant of the requested relief.

Mr. Roshto felt that the proposed improvements are compelling and he appreciated that for the Township. He felt that the Twenty-Twenty concept with the earth tones is the right way to go and he said that he was pleased with the concessions that the applicant has made.

Mr. Pfeil made a motion to approve the application with the conditions which will be outlined by Mr. O'Brien which was seconded by Mr. Wallisch.

Mr. O'Brien outlined the following conditions of approval:

- 1) The applicant is to clear up the discrepancies concerning the signage totals on the engineering and architectural plans.
- 2) "The Home of the Whopper" sign is to be removed.
- 3) The internal illumination of the two button signs will be removed and external illumination will be provided.
- 4) Landscaping will be added to the front of the property with input from the Shade Tree Commission and, if possible, a rain garden is to be installed.
- 5) The button signs will be made of wood or foam board in accordance with the Ordinance.
- 6) The parking lot will be milled, repaved, and restriped and the intakes replaced.
- 7) Brick will be placed around the menu sign.
- 8) The missing stop sign along the Valley Mall exit from the property will be replaced.
- 9) The prior site plan approval will be amended to allow a 2' ground height clearance of the ground sign along the Valley Road street frontage of the property.
- 10) The parapet lighting, as proposed, will be removed.
- 11) The lighting pattern will be established on the site plan consistent with the Ordinance.

A roll call vote was taken. Those in favor: Mrs. Dapkins, Mr. Pfeil, Dr. Rae, Mrs. Roshto, Mr. Aroneo, Mr. Wallisch and Mr. Connor. Those opposed: None.

There being no further business, the meeting adjourned at 10:50 P.M.

